

WILLIAM K. HARRINGTON
United States Trustee for Region 2
One Bowling Green
New York, New York 10004
Telephone: (212) 510-0500
By: Rachael E. Siegel
Trial Attorney

Hearing Date: March 4, 2025
Hearing Time: 10:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
In re	:	Case No. 25-10159 (MEW)
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16 EF Apartment LLC,	:	(Chapter 11)
	:	
Debtor.	:	
	:	
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PLEASE TAKE NOTICE that upon this Notice of Motion and the accompanying memorandum of law, William K. Harrington, the United States Trustee for Region 2 (the “**United States Trustee**”), will move this Court before the Honorable Michael E. Wiles, Bankruptcy Judge, in the United States Bankruptcy Court for the Southern District of New York, 1 Bowling Green, New York, New York 10004 on March 4, 2025 at 10:00 a.m. or as soon thereafter as counsel can be heard, for an order dismissing this bankruptcy case with prejudice, and for such other and further relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that this Motion will be heard on March 4, 2025 at 10:00 a.m. through CourtSolutions. Participants are required to register their appearance by 4:00 p.m. the day before the hearing utilizing the e-Court Appearances tool at <https://ecf.nysb.uscourts.gov/cgi-bin/nysbAppearances.pl>.

PLEASE TAKE FURTHER NOTICE that any responsive papers should be filed with the Court and personally served on the United States Trustee, attention Rachael Siegel, Esq., via e-mail at rachael.e.siegel@usdoj.gov no later than three (3) days prior to the return date set forth

above. Such papers shall conform to the Federal Rules of Civil Procedure and identify the party on whose behalf the papers are submitted, the nature of the response, and the basis for such response.

Dated: New York, New York
January 31, 2025

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE

By: /s/ Rachael E. Siegel
Rachael E. Siegel
Trial Attorney

WILLIAM K. HARRINGTON
United States Trustee for Region 2
One Bowling Green
New York, New York 10004
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UNITED STATES BANKRUPTCY COURT
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**MEMORANDUM OF LAW OF THE UNITED STATES TRUSTEE
IN SUPPORT OF MOTION FOR AN ORDER DISMISSING THIS CASE**

TO THE HONORABLE MICHAEL E. WILES,
UNITED STATES BANKRUPTCY JUDGE:

This memorandum of law is in support of the motion (the “**Motion**”) of William K. Harrington, the United States Trustee for Region 2 (the “**United States Trustee**”), for an order dismissing the case of 16 EF Apartment LLC (the “**Debtor**”). In support thereof, the United States Trustee respectfully alleges the following:

INTRODUCTION

“Cause” exists under 11 U.S.C. § 1112(b) to dismiss or convert this bankruptcy case. The Debtor is a corporate entity but has no counsel of record and filed its chapter 11 bankruptcy petition *pro se*. A corporate debtor cannot proceed without counsel. To date, no retention application has been filed, nor has any attorney filed a notice of appearance on behalf of the Debtor. Accordingly, cause exists to dismiss or convert this case pursuant to 11 U.S.C. § 1112(b).

FACTS

1. On January 29, 2025, the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “**Bankruptcy Code**”).
2. The Debtor continues to control and maintain its assets and operations as a Debtor-in-Possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.
3. As of the date hereof, no attorney or counsel has filed an appearance.
4. As of the date hereof, no retention application has been filed on behalf of counsel.

ARGUMENT

I. Dismissal or Conversion is Appropriate Under 11 U.S.C. § 1112(b)

Section 1112(b) of the Bankruptcy Code provides that on request of a party in interest, and after notice and a hearing, “the court shall convert a case under [chapter 11] to a case under chapter 7 or dismiss [the case] . . . , whichever is in the best interests of creditors and the estate, for cause.” 11 U.S.C. § 1112(b)(1) (emphasis added).

It is well established that a corporation, or other entity, may only appear in federal courts through licensed counsel. *Rowland v. California Men’s Colony*, 506 U.S. 194, 201-02 (1993) (stating that “[i]t has been the better part of two centuries . . . that a corporation may appear in the federal courts only through licensed counsel); *see also*, *Jones v. Niagara Frontier Transp. Auth.*, 722 F.2d 20, 22 (2d Cir. 1983 (noting that “a corporation, which is an artificial entity that can only act through agents, cannot proceed *pro se*”).

The failure of a corporation like the Debtor to retain counsel in a chapter 11 case is cause for conversion or dismissal pursuant to section 1112(b) of the Bankruptcy Code. *See, e.g., In re 167 W. 133 St. Hous. Dev. Fund Corp.*, No. 18-12043 (JLG), 2018 Bankr. LEXIS 2909, at *12

(Bankr. S.D.N.Y. Sep. 25, 2018) (listing cases).

II. There are No Unusual Circumstances Establishing that Dismissal is Not in the Best Interests of Creditors and the Estate

Under section 1112(b)(2) of the Bankruptcy Code, after the movant shows cause, the burden shifts to the debtor and other parties in interest to show that there are “unusual circumstances establishing that conversion or dismissal is not in the best interests of creditors and the estate.” 11 U.S.C. § 1112(b)(2).

There are no unusual circumstances in this case that would establish that dismissal is not in the best interests of creditors and the estate. The Debtor has done very little in this case, and in fact failed to file numerous documents that were due to be filed along with its petition, and is not represented by retained counsel. Based on these facts, it is unlikely that the Debtor will be able to confirm a plan.

CONCLUSION

WHEREFORE, the United States Trustee respectfully requests that the Court enter an order dismissing this Chapter 11 case pursuant to 11 U.S.C. § 1112(b) and granting such other and further relief as may be deemed just and proper.

Dated: New York, New York
January 31, 2025

Respectfully submitted,

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE

By: /s/ Rachael E. Siegel
Rachael E. Siegel
Trial Attorney

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Case No. 25-10159 (MEW)
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16 EF Apartment LLC,	:	(Chapter 11)
	:	
Debtor.	:	
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ORDER DISMISSING CHAPTER 11 CASE

Upon the motion of William K. Harrington, the United States Trustee for Region 2, to dismiss this Chapter 11 case (ECF No. ____) (the “**Motion**”); and the Court having determined notice of the Motion is sufficient; and the Court having held a hearing (the “**Hearing**”); and upon the record of the Hearing; and after due deliberation and sufficient cause appearing therefore, it is:

ORDERED, that the Motion is granted; and it is further

ORDERED, that 16 EF Apartment LLC’s case commenced under Chapter 11 of the Bankruptcy Code be and hereby is dismissed pursuant to 11 U.S.C. § 1112(b).

Dated: New York, New York
March ____, 2025

/s/ _____
HONORABLE MICHAEL E. WILES
UNITED STATES BANKRUPTCY JUDGE